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**OPINION NUMBER 99-2**

**DATE:** July 15, 1999

**SUBJECT:** Applicability of San Diego Charter Section 219 to Portions of  
De Anza Harbor Resort Leasehold

**REQUESTED BY:** William T. Griffith, Director  
Real Estate Assets Department

**PREPARED BY:** Prescilla Dugard, Deputy City Attorney

**QUESTION PRESENTED**

Do the limitations on leases of pueblo lands contained in San Diego Charter section 219 preclude the lease in excess of fifteen years of portions of pueblo lots 1208 and 1798 granted to the City by the State in 1964?

**SHORT ANSWER**

No. Because lots 1208 and 1798 were previously conveyed to the State of California, and subsequently conveyed back to the City pursuant to a grant in 1964, years after the adoption of Charter section 219, they are not subject to the limits of the section. Section 219 applies only to those pueblo lots that were part of the original Pueblo Lands grant that were still City-owned when the predecessor to Charter section 219 was adopted in 1909, and which have remained in continuous City ownership.

## **BACKGROUND**

The area in Mission Bay commonly known as De Anza Harbor Resort is currently leased by the City to De Anza Harbor Resorts, LLP [De Anza], pursuant to a lease dated May 18, 1951 (and subsequently amended). The leased property includes portions of pueblo lots 1208 and 1798 [the Lots] of the Pueblo Lands of San Diego, according to a map made by James Pascoe in 1870.<sup>1</sup> At the time of the original lease between the City and De Anza's predecessor in interest, the City did not own the Lots; they were a part of State park land leased to the City. In 1963, the State granted the Lots to the City in trust as part of Mission Bay State Park contingent upon the execution of an agreement between the City and the State. In 1964, the City and the State entered into the Mission Bay State Park Agreement and Grant of Trust effecting the grant.

At a City Council hearing on February 1, 1999, the Council received public testimony on the potential redevelopment of the De Anza Harbor Resort. At that time, questions were raised about the City's ability to enter into any long-term lease of the property, in light of the provisions of Charter section 219, which states that it precludes the lease of pueblo lands in excess of fifteen years. This opinion resolves the question of which of the original pueblo lands are subject to the limitations contained in Charter section 219.

## **ANALYSIS**

### **History of the Pueblo Lands**

On April 10, 1874, the City received title to the Pueblo Lands of San Diego as successor to the Mexican pueblo of San Diego [the 1874 Patent]. The attached "Pueblo of San Diego (A brief history of the legal status of the Pueblo Lands of San Diego)" [the Pueblo Lands History]<sup>2</sup> provides a concise report of the history of the pueblo land grant to the City and further describes pertinent events leading to the adoption of the current San Diego Charter section 219.

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<sup>1</sup>The map was filed in the Office of the Recorder of San Diego County, November 14, 1921, and is known as Miscellaneous Map No. 36. *See* copy attached as Exhibit "A."

<sup>2</sup>Attached as Exhibit "B," 1952 City Att'y MOL 311.

## History of San Diego Charter Section 219

San Diego Charter section 219 provides as follows:

No sale of Pueblo Lands owned by The City of San Diego which are situated North of the North line of the San Diego River shall ever be valid and binding upon said City unless such sale shall have been first authorized by an ordinance duly passed by the Council and thereafter ratified by the electors of The City of San Diego at any special or general municipal election. The City Manager shall have authority to lease Pueblo Lands, provided that any lease for a term exceeding one year shall not be valid unless first authorized by ordinance of the Council. No lease shall be valid for a period of time exceeding fifteen years.

Section 219 was part of the Charter adopted by the City of San Diego in 1931. The Pueblo Lands History demonstrates that this charter provision derives from a charter amendment adopted January 12, 1909 [the 1909 Amendment]. The 1909 Amendment was a response to the court's ruling in *Ames v. City of San Diego*, 101 Cal. 390 (1894), in which the City lost title to certain pueblo lots through a claim of adverse possession. The court's ruling was based upon the City's ability to freely alienate the lands. The 1909 Amendment was designed to prevent this from occurring again. It read:

50. (a) That all pueblo lands owned by the City of San Diego, lying and being situated north of the north line of the San Diego river be, and the same are hereby reserved from sale until the year 1930, *provided, however*, that at any time should it be desired to sell any part or portion of such public lands prior to the year 1930, the sale thereof may be authorized by an ordinance duly passed by the Common Council and ratified by the electors of the City of San Diego at any special or general municipal election. The Common Council shall levy annually, in addition to all other taxes provided for in this charter, 2c on each one hundred dollars valuation of property for the purpose of improving said pueblo lands herein reserved from sale.

(b) The Common Council may provide for the sale and conveyance or lease of *all other lands now or hereafter owned by said city* not dedicated or reserved for public use; but all leases and sales shall be made at public auction, unless otherwise approved by ordinance

after publication or notice thereof for at least three (3) weeks. No lease shall be made for a longer term than two years except by an ordinance passed by an affirmative vote of two-thirds of the members of the Common Council (emphasis added).

The reading of the 1909 Amendment demonstrates that the provision was intended to prevent sale of only those pueblo lands then in City ownership based upon the following facts: (1) the provision uses language in the present tense, “are reserved” and (2) subdivision (a) does not refer to pueblo lands “hereafter owned” as does subparagraph (b). Because this language was not included in subparagraph (a), standard principles of legislative interpretation lead to the conclusion that the section was not intended to protect pueblo lands acquired after the date of the provision.

In 1929, the pueblo lands reservation issue was before the voters again in the form of a charter amendment. The description of propositions to be voted upon described the item as follows:

Amend Sub-section 48(a) of Section 1, Chapter II, Article II of the City Charter. This amendment provides that the City pueblo lands lying north of the San Diego river shall be reserved from sale until the year 1940, instead of the year 1930, as now provided.

As a result of the 1929 election, the charter section was amended to read as follows:

48 (a). That all pueblo lands owned by the city of San Diego lying and being situated north of the north line of the San Diego river, be, and the same are hereby reserved from sale until the year 1940; *provided, however*, that at any time should it be desired to sell any part or portion of such pueblo lands prior to the year 1940, the sale thereof may be authorized by an ordinance duly passed by the common council and ratified by the electors of the city of San Diego at any special or general municipal election; *and provided, further*, that if at any time it should be desired to lease any part or portion of such public lands prior to the year 1940, the leasing thereof may be authorized by an ordinance duly passed by the common council; *provided*, that no lease so authorized shall be for a longer period of time than fifteen years. The common council shall levy, annually, in addition to all other taxes provided for in this charter, two cents on each one hundred dollars valuation of

property for the purposes of improving said pueblo lands herein reserved from sale. (*Italics in original.*)

Thus, in 1929, the City added 10 years to the restriction on the sale of pueblo lands north of the north line of the San Diego river and added a restriction on the lease of those same lands.

In 1931, the City of San Diego reformed itself, losing the five member common council and adopting a freehold charter, containing the current Section 219. This section is a virtual restatement of the 1929 amendment, without the added language allowing taxation for improvement of the pueblo lands and without the 1940 expiration date.

Based upon the review of the legislative history of Section 219, as outlined above, it is the City Attorney's opinion that merely having the designation "pueblo lot no. \_\_\_" on a piece of property does not answer the question of whether Charter section 219 controls the City's disposition of that property. That designation appears to be part of the legal description of a lot irrespective of who owns the lot. Section 219 applies only to pueblo lands north of the north line of the San Diego river<sup>3</sup> that were part of the 1874 Patent and still in City ownership when the 1909 Amendment was adopted to protect those lands, and which have remained in continuous City ownership since that time. Disposition of any other City-owned property is determined by any limitations contained in the original grant of ownership in that property. Because the City's current ownership interest in the Lots is through the State grant acquired in 1964, disposition of the Lots, including lease limitations, is controlled by the provisions of Chapter 142 of the Statutes of 1945, as amended by Chapter 1455 of the Statutes of 1955 (which provide for a fifty-year limit on leases).

This analysis is consistent with prior opinions and memoranda of this office relating to the disposition of pueblo lands.<sup>4</sup> To interpret the provision so broadly as to encompass pueblo lands regardless of when acquired would lead to the unintended result of subjecting any property owned or acquired by the City north of the north line of the San Diego River to the Section 219 restrictions.

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<sup>3</sup>See attached for reference a map showing the course of the San Diego River as it was at the time of the adoption of the original Charter provision (Exhibit "C"). Pueblo lots have been overlaid to show which lots lie north of the boundary as provided in the Charter.

<sup>4</sup>See attached 1956 City Att'y Memorandum to the Mayor and Council (Exhibit "D"). This memorandum provides a thorough analysis of the then status of ownership of various parcels in Mission Bay, including how the City acquired the parcels. *See also* 1981 Op. City Att'y 7 and 1976 City Att'y MOL 286.

**CONCLUSION**

It is clear from the history of San Diego Charter section 219 and the pueblo lands that the intent of the charter provision as originally adopted was to preserve the pueblo lands north of the north line of the San Diego river then in City ownership. Current Charter section 219 merely lifted the time limit on the protection of those lands. Therefore, it is the City Attorney's opinion that the limitations of Charter section 219 apply only to those of the pueblo lands lying north of the north line of the San Diego river (as depicted on Exhibit "C") granted to the City of San Diego as part of the 1874 Patent that were in City ownership on January 12, 1909. Any property acquired by the City after that date or south of the line depicted on Exhibit "C" is subject only to the restrictions and limitations of the applicable grant of title.

Respectfully submitted,

CASEY GWINN  
City Attorney

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Attachments  
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